



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 17, 1992

Mr. Jeff Hankins
Legal Assistant, Program Division
Legal Services, 110-1C
Texas Department of Insurance
P. O. Box 149104
Austin, Texas 78714-9104

OR92-345

Dear Mr. Hankins:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 16091.

The Texas Department of Insurance (TDI) has received a request for information relating to the internal investigation of a former employee of TDI. Specifically, the requestor seeks "all written memorand[a], any written instructions, or other data relevant to his dismissal, including copies of the internal investigation referenced in your response to the Texas Human Rights Commission and all other documents promulgated by your agency in regard to [the former employee's] complaints to the Human Rights Commission. . .includ[ing] ANY referral letter which may have been sent to the Attorney General's office wherein you may have challenged the releasability of the matters." (Emphasis in original.)

You object to disclosing the requested information on the internal investigation and claim exemption from public disclosure under sections 3(a)(3) and 3(a)(11) of the Open Records Act.

Section 3(a)(3) (the "litigation exception") excepts

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the

attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

Previous open records decisions issued by this office resolve your request. Section 3(a)(3) applies only when litigation in a specific matter is pending or reasonably anticipated and only to information clearly relevant to that litigation. Open Records Decision Nos. 555, 551 (1990). Section 3(a)(3) also requires parties to a lawsuit to obtain relevant information through the normal process of discovery. Open Records Decision No. 551 at 4; *see* Open Records Decision No. 386 (1983) (pendency of a complaint before the EEOC indicates a substantial likelihood of litigation and is therefore sufficient to satisfy section 3(a)(3)).

We have considered the 3(a)(3) exception that you claim. The former employee has filed a complaint with the Texas Commission on Human Rights. *See* V.T.C.S. art. 5221k, § 6.01(a). The attorney that he has retained has contacted the Legal Services Division of TDI and asserts possible legal action. Accordingly, we conclude that litigation may be reasonably anticipated. Furthermore, having examined the documents submitted to us for review, we conclude that they relate to the anticipated litigation. Consequently, unless the requested information on the internal investigation has previously been disclosed to the former employee, *e.g.*, through discovery or by court order, you may withhold such information from required public disclosure under section 3(a)(3) of the Open Records Act. Please note that this ruling applies only for the duration of the litigation at issue and to the documents at issue here. As we resolve this matter under section 3(a)(3), we need not address the applicability of section 3(a)(11) at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-345.

Yours very truly,



Kym Oltrogge
Assistant Attorney General
Opinion Committee

KO/HJ/lmm

Ref.: ID# 16091
ID# 16152

cc: Ms. Frances Ortega
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